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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,726

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Michael Majchrzak

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05/16/2006

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EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT

PAPER NUMBER

3742

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/763,726

Applicant(s)

MAJCHRAK ET AL.

Examiner

Joseph M. Pelham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-22, 24, 26, 28, 29, 42-55 and 58-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 60-65 is/are allowed.
- 6) ☒ Claim(s) 19-22, 24, 26, 28, 29, 42-47, 49-54, 57-59, 66-70 and 72-75 is/are rejected.
- 7) ☒ Claim(s) 48, 55 and 71 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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The Examiner acknowledges Applicants' submission of the amendment filed 3/13/06. Claims 19-22, 24, 26, 28, 29, 42-55, and 58-75 are now pending.

***Claim Rejections - 35 USC § 112***

Claim 67 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim recites an air stream traveling "in a circular loop," which does not accurately describe the air path, since the path is not circular. In fact the air stream splits and is reunited prior to entering the fan.

***Claim Rejections - 35 USC § 103***

Claims 19-22, 24, 26, 28, 29, 42-47, 49, 50-54, 57-59, 66-70, and 72-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. Appln. 2002/0005686 (US'686) in view of JP 2000-175781 (JP'781) and US Pat. 6742344 (US'344).

US'686 discloses, at Fig. 2, paragraphs [0024] – [0029], and [0034] a food display container with open front 35, fan driven heated air circulation 66, 76 with temperature control, and a duct system with an air return 62 receiving a portion of the air so as to form an air curtain 104 at the open front, the air stream passing through a baffle 62 in the duct system, and the air stream passing "over a water source."

US'686 does not explicitly disclose humidity control with a heated water source, air from the air curtain passing over the food to another air return opposite the open front, or a majority of this air coming from the air curtain.

JP'781 discloses a heated container (heaters 14, 23) and temperature and humidity control (15, 17), and an air stream that "passes over a water source [16, 17]" which is heated, since broadly but still conventionally interpreted, the air would be said to "pass over" source 16 or 17. Moreover, since the air curtain is formed by an air stream of relatively high speed, the speed at the water source would appear to be inherently lower. It would have been obvious to adapt the humidity control of JP'781 to the heated chamber of US'686 to prevent the drying of displayed foods.

Referring to Fig. 1, US'344 discloses a food display container with opening 1, fan driven air circulation 16, 17, duct system 4-10 comprising one air return 3 adjacent the opening 1 and a plurality of planar, perforated air returns 13 opposite the opening. Since the air emerging at both nozzles 7 and 10 form, so to speak, a double layered curtain, the "majority of air received by" the air returns originates in the portion of the air curtain formed by openings 7.

The principle advantage cited for the US'344 *normal* circulation arrangement (not its "defrosting cycle"), "allows cooled air from the cooling element to be used in a far more efficient manner" (col. 2, lines 46-48), and would therefore necessarily *allow heated air from a heating element to be used in a far more efficient manner* for exactly the same reason, because the energy transfer between the food being treated and the air stream is more efficient regardless of whether it is being heated or cooled. Hence it

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would have been obvious to modify the air circulation of US'686 after the manner of US'344.

### ***Allowable Subject Matter***

Claims 60-65 are allowed.

Claims 48, 55, and 71 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

However, since US'344 (Vormedal) has again been applied in the new rejections, the Examiner will address the pertinent aspect of Applicant's argument.


Applicant asserts that the duct system of US'344 is intended to facilitate defrosting, and hence is irrelevant to a heated enclosure. The Examiner notes that Applicant has misunderstood the operation of US'344, and urges a careful review of the US'344 disclosure. During *normal* operation, "damper" 14 is in the vertical position (*Fig. 1*), which provides exactly the efficient temperature exchange cited in the rejections, and motivating the combination with US'686. In the *defrosting* mode, "damper" 14 is in the horizontal position (*Fig. 2*), which is strictly a temporary defrosting mode. It does not teach "the advantage of using the **dual** 'ducting arrangement... during defrosting'" (Exr's emphasis) which Applicant has misquoted US'344 to teach; it is precisely the advantage of using "the **rotatable damper** in the ducting arrangement... during defrosting." The defrosting mode has advantages independent of the normal operating mode, the latter of which apply directly to the keeping of hot foods as well as cold.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5/11/06

  
JOSEPH PELHAM  
PRIMARY EXAMINER